

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
OBEID, : Docket #14cv6498
Plaintiff, :
- against - :
LA MACK, et al., : New York, New York
Defendants. : October 31, 2014

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PROCEEDINGS BEFORE
THE HONORABLE LAURA TAYLOR SWAIN
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs: BOIES, SCHILLER & FLEXNER, LLP
BY: MARC AYALA, ESQ.
EDWARD NORMAND, ESQ.
333 Main Street
Armonk, New York 10504

For the Defendants: MCGUIRE WOODS, LLP
BY: NOREEN KELLY-DYNEGA, ESQ.
1345 Avenue of the Americas, 7th Floor
New York, New York 10105

Transcription Service: Carole Ludwig, *Transcription Services*
141 East Third Street #3E
New York, New York 10009
Phone: (212) 420-0771
Fax: (212) 420-6007

Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

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<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: This is William Obeid versus Christopher La Mack, et al., 14cv6498.

HONORABLE LAURA TAYLOR SWAIN (THE COURT): For the benefit of the audio record, I'm Judge Swain speaking, counsel, would you be good enough to introduce yourselves by stating your appearances.

MR. MARC AYALA: Marc Ayala with Boies, Schiller & Flexner on behalf of plaintiff William T. Obeid.

MR. TED NORMAND: Ted Normand from Boies Schiller, same party.

THE COURT: Good afternoon, Mr. Ayala and Mr. Normand.

MS. NOREEN KELLY-DYNEGA: Good afternoon, Your Honor, Noreen Kelly-Dynega with McGuire Woods for the defendants.

THE COURT: Good afternoon, Ms. Kelly-Dynega. So I'd first like to address the defendant's motion to dismiss or for extension. I've reviewed thoroughly all of the parties submissions. In core the defendant contends that the plaintiff's trademark cause of action is meritless and that federal subjection, federal question subject matter jurisdiction is therefore lacking and of necessity and sufficient to support supplemental jurisdiction and the defense makes the further arguments that diversity

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2 jurisdiction is lacking and that if I find there to be
3 jurisdiction, I ought to abstain in exercise of my discretion
4 in favor of the North Carolina litigation. I've considered
5 all of these arguments carefully, the motion to dismiss or for
6 abstention is denied. Where there is n asserted basis for
7 subject matter jurisdiction, that's also an element of the
8 asserted federal cause of action. The Court limits its
9 inquiry to whether the complaint on its face is sufficient so
10 as to seek recovery under the federal law or constitution in
11 that case, which is the case here, then the Court finds
12 subject matter jurisdiction and reserves further scrutiny for
13 an inquiry on the merits. And I refer you to the Second
14 Circuits decision in Nowak v. Ironworkers Local 6 Pension
15 Fund, 81 F3d 1182 at 1189 (2d Cir. 1996). I find that in
16 light of the presence of federal subject matter jurisdiction
17 and the relationship of the claims inter se in this case that
18 supplemental jurisdiction is properly exercised of the non-
19 federal claims in this case. I find it unnecessary to address
20 the diversity jurisdiction point since I have found subject,
21 federal question subject matter jurisdiction and supplemental
22 jurisdiction. I decline to exercise the Court's power to
23 abstain, the Colorado River abstention doctrine is a doctrine
24 that applies in exceptional cases, normally it is the
25 unflagging obligation of a federal court to exercise its

jurisdiction. The defendants have not demonstrated that the circumstances of the incident case are sufficiently concurrent or parallel with the North Carolina action to render abstention appropriate. For example, the trademark claim is not one that has been raised in the North Carolina action. Accordingly, the defendant's motion to dismiss is denied in its entirety and the motion is also denied insofar as it seeks abstention or a stay of this case pending resolution of the North Carolina action, and will enter an order saying that for the reasons stated on the record the motion is denied.

So now let us turn to the initial conference. You indicate in your response to my question as to the status of settlement that you've engaged in settlement discussions but it failed to reach a settlement. I don't want to know the particulars of positions, I do want a little more insight into the dynamic. Are you still in the process of discussions and would you be willing to continue those discussions now with the magistrate judge or in the mediation program?

MR. AYALA: Your Honor, we are continuing to have those discussions and are working in earnest to see whether they have a likelihood of producing a settlement for the parties. And we plan to have further communications in the next couple of weeks and should have an idea by then of whether this is likely to settle or not.

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THE COURT: Thank you. Ms. Kelly-Dynega?

MS. KELLY-DYNEGA: Yes, Your Honor, agreed, we are in the midst of discussions and think it's a little preliminary to go to the magistrate or a mediation program in the hopes that we can resolve it on our own.

THE COURT: All right. What I'd like to do, and I appreciate your candor about that, I'd like to include -- tell them to call back at 12:35, please. That's the 12:30 conference. Our normal courtroom deputy is out today so we're making our way with the equipment, so we may have a couple of interruptions.

Anyway, I include an outside deadline to begin working with, I'll frankly call it the Magistrate Judge for now, in the scheduling order, just so that settlement stays on the radar. And so given what you've said, I would be inclined to put that deadline at the end of January or the end of February, do you have a preference?

MR. AYALA: We would prefer the end of January, Your Honor.

MS. KELLY-DYNEGA: The end of January is fine, Your Honor.

THE COURT: Very well, I will include that in the scheduling order. Now as to the deadline for applications to amend pleadings or add parties, I'll give you December 31

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because I want all known claims, defenses, and parties to be identified early in the discovery process. And let's see, the 26(A)(1) deadline I would make November 14 unless there's a reason that one side or the other needs more time?

MR. AYALA: No objection, Your Honor.

THE COURT: Okay. I'll be incorporating these deadlines into a scheduling order that I'll type up in a minute and I'll give you conformed copies, and of course it will be posted on ECF. I see that you've agreed that the discovery taken here would be deemed taken both in this action and the North Carolina action, can I assume that the principle works the other way, as well, that anything taken in the North Carolina action would be deemed taken here?

MR. AYALA: Yes, Your Honor.

MS. KELLY-DYNEGA: Yes, Your Honor.

THE COURT: And is there any objection to my including a statement to that effect in this scheduling order?

MR. AYALA: None.

MS. KELLY-DYNEGA: No objection.

THE COURT: All right. And I'm adopting the fact discovery deadline of June 30 and I will give you the August 30 expert deadline with the provision that initial reports are due 60 days before that deadline and rebuttal reports are due 30 days before that deadline. And I'll type up the scheduling

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2 order in a moment, is there anything else that you'd like to
3 discuss specifically before I start working on that order?

4 MR. AYALA: No, Your Honor, thanks.

5 MS. KELLY-DYNEGA: No, Your Honor.

6 THE COURT: Thank you. I'm giving you October 2 as
7 the deadline for the commencement of any dispositive motion
8 practice. And December 4, 2015, at 10:30 in the morning as
9 your final pretrial conference date which is essentially a
10 trial ready date. So in section 12 of the order which is
11 captioned "other matters," I've written "the parties must make
12 their FRCP 26(A)(1) disclosures by November 14, 2014, the
13 parties must begin meeting with Judge Dolinger for settlement
14 purposes by January 30, 2015, and all discovery shall be
15 deemed taken in both this action and the North Carolina
16 action." So I will print signature and conformed copies of
17 this and then I'll prepare the order of reference. I'm making
18 the reference to Judge Dolinger one for general pretrial
19 management so if you have discovery disputes or scheduling
20 issues, or anything else nondispositive you can manage those
21 with him and not run back and forth between the two of us.

22 And so Mr. Ayala and Normand, I would be grateful if
23 someone from your firm would call Judge Dolinger early next
24 week to request a settlement conference date in that late
25 January timeframe so that you can be on his calendar and we'll

drop him a note this afternoon to let him know to expect that
call next week.

MR. AYALA: We'll do so, Your Honor.

THE COURT: Thank you. So Mr. Halverson will give
you your conformed copies, is there anything else we should
take up together?

MR. AYALA: No, Your Honor, thank you.

MS. KELLY-DYNEGA: Thank you.

THE COURT: Thank you, we're adjourned, keep well.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Obeid v. La Mack, et al., Docket #14-cv-6498, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature_____

Date: November 4, 2014